FILE COPY

Office - Supreme Court, U. S.
FILED
JUL 22 1949
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 198

ISADORE M. KRACHOCK,

Appellant,

vs.

DEPARTMENT OF REVENUE,

Appellee.

BRIEF OF APPELLANT IN OPPOSITION TO APPELLEE'S STATEMENT AGAINST JURISDICTION.

HARRY G. FINS and WALTER F. DODD,
Counsel for Appellant.

77 W. Washington Street
Suite 1217
Chicago 2, Illinois.

UNITED STATES LAW PRINTING CO., 2617 N. HALSTED ST., CHICAGO 14, ILL.

INDEX.

	Page
Administrative Agency Record	3-4
Complete Denial of "due process"	5-8
Facts	1
Judicial Review	2
Motion of defendant	3
Opinion of Supreme Court of Illinois	3
Order of dismissal	2-3
Request for Record	4

AUTHORITIES CITED

Young v. Ragen, 69 S. Ct. 1073, 1074, (decided June 6, 1949)	5-6

BLEED THROUGH

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 198

ISADORE M. KRACHOCK,

Appellant,

vs.

DEPARTMENT OF REVENUE,

Appellee.

BRIEF OF APPELLANT IN OPPOSITION TO APPELLEE'S STATEMENT AGAINST JURISDICTION.

May It Please The Court:

The facts are simple. The Plaintiff-Appellant applied to the Department of Revenue, an administrative agency of the State of Illinois, for a Motor Fuel Distributor's license. The Department of Revenue refused to give him a license, claiming that there was due from the Plaintiff to the State the sum of $742.59. The Plaintiff denied that he owed the State any money and asked that the Department of

Revenue give him a hearing to determine this question. The Department of Revenue refused to give him a hearing and refused to give him a license (Record Pages 3-6). In his Complaint, the Plaintiff-Appellant alleged (Record 5):

> "Plaintiff desires a judicial review of the decision of the Department of Revenue refusing a hearing to the plaintiff and refusing to issue a license to the plaintiff.
>
> "Said decision of the Department of Revenue which was rendered without a hearing and without an opportunity to be heard is in direct violation of due process of law as guaranteed to the plaintiff by Article II, Section 2 of the Illinois Constitution of 1870 and the 14th Amendment to the Constitution of the United States of America."

To the Complaint of the Plaintiff-Appellant, which was filed in the Circuit Court of Cook County, Illinois, the Defendant-Appellee filed a motion reading as follows (Record 14-15):

> "Now comes Paul C. Rosenquist, Director of Revenue of the Department of Revenue of the State of Illinois, by George F. Barrett, Attorney General of the State of Illinois, and enters his special, limited and restricted appearance for the sole purpose of challenging the jurisdiction of this court in the above entitled cause, and moves the court to quash the complaint and to dismiss the cause * * *
>
> "Wherefore, the defendant, on account of the want of jurisdiction, averred, moves this Honorable Court that the complaint be quashed and the proceedings dismissed."

Thereafter, a judgment was entered (Record 21) that:

> "It is hereby ordered that said motion of defendant be and is hereby sustained and the complaint is quashed and the suit dismissed at plaintiff's costs, to the entry of which order the plaintiff objects and excepts."

BLEED THROUGH COPY BOU

On appeal, the Supreme Court of Illinois affirmed the judgment of the Circuit Court of Cook County and said (403 Ill. 148, 153-154):

"It may be noted at this point that the defendant is 'Department of Revenue'. The Department of Revenue is an arm of the State and may not be sued, because the constitution of Illinois provides that the State shall never be made a defendant in any court of law or equity. (Art. IV, Sec. 26). This provision of the constitution has been construed to apply to the Department of Public Works and Buildings, Department of Public Welfare, the Illinois National Guard, and others. A Department of State government is commonly known as a part and division of the government, and it is recognized by State and Federal authorities. A full review of the authorities sustaining this position will be found in *Noorman* v. *Department of Public Works and Buildings*, 366 Ill. 216; *Posinski* v. *Chicago Milwaukee, St. Paul and Pacific Railroad Co.*, 376 Ill. 346, 350; *Monroe* v. *Collins*, 393 Ill. 553, 558.

"In view of the foregoing the judgment of the circuit court in dismissing the complaint is affirmed."

The record of the administrative agency is always in the exclusive possession of the agency and unless a means is provided for the production of the administrative agency's record, a review of same is an impossibility. Therefore, Section 9 of the Illinois Administrative Review Act (Ill. Rev. Stat. 1947, Chap. 110, Sec. 272) provides:

"The complaint shall contain a statement of the decision or part thereof sought to be reviewed. It shall specify whether the transcript of evidence, if any, or what portion thereof, shall be filed by the agency as part of the record. * * * Except as herein otherwise

provided, *the administrative agency shall file an answer which shall consist of* the original or a certified copy of *the entire record* of proceedings under review, including such evidence as may have been heard by it and the findings and decisions made by it." (Emphasis ours.)

The Complaint requested the defendant to produce the record, as follows (Record 6):

"The Department of Revenue, defendant herein, is hereby requested to file an Answer in accordance with the law in such cases made and provided. By virtue of the fact that the defendant rendered its decision without holding any hearing and by refusing the plaintiff's request for a hearing, the following shall be filed by the Department of Revenue as part of the record:

"(1) Application of Isadore M. Krachock for a license to transact business as a Distributor of Motor Fuels within the State of Illinois, dated February 6, 1948.

"(2) Refusal by Department of Revenue, addressed to Isadore M. Krachock, dated February 17, 1948.

"(3) Request by Harry G. Fins, attorney for Isadore M. Krachock, that matter be set for hearing for presentation of legal evidence, dated March 5, 1948.

"(4) Refusal by Department of Revenue to set a hearing and refusal to issue license, dated March 9, 1948, and addressed to Harry G. Fins, attorney at law, for Isadore M. Krachock."

The defendant refused to produce the record, and, instead, made a motion to quash the Complaint and dismiss the cause, which the Circuit Court of Cook County granted and the Supreme Court of Illinois affirmed.

The Appellee, in its Statement Against Jurisdiction, says:

"Under Illinois law it is incumbent upon one seeking administrative review not only to request *but to procure a* record of administrative action sought to be assailed . . . "

BLEED THROUGH COPY BO

Thus, although the Plaintiff cannot possibly have a record, and since the Illinois Department of Revenue can never be made a defendant, (according to the present holding of the Supreme Court of Illinois), there is no possible way of compelling the Department of Revenue to produce the record, yet the Plaintiff must produce the record, thus adding "insult to injury" in depriving a citizen of a hearing as required by "due process of law" under the 14th Amendment to the Constitution of the United States.

It is this requirement that the Plaintiff produce a record, (*which the plaintiff does not have and cannot possibly have*), that counsel for the Appellee, in its Statement Against Jurisdiction, relies upon in saying "that the Illinois Supreme Court's judgment presently appealed from rests upon grounds of State procedure that are independent of the grounds which appellant asserts deprive him of due process."

The same argument of the Attorney General of Illinois (who is counsel for Appellee in the case at bar) was overruled by the unanimous opinion of this Honorable Court in the recent case of *Young* v. *Ragen*, 69 S. Ct. 1073, decided June 6, 1949, wherein this Court reversed eight Illinois cases and said (page 1074):

> "The Attorney General's position concerning these denials, as we understand it, is that these decisions may be wrong, depending upon whether his interpretation of the Loftus 'announcement' is the correct one, but that whether right or wrong, they are decisions solely upon a question of Illinois procedural law and thus do not warrant invocation of the jurisdiction of this Court.
>
> "Of course we do not review decisions which rest

ND CLOSE IN CENTER

> upon adequate non-federal grounds, and of course Illinois may choose the procedure it seems appropriate for the vindication of federal rights. *Loftus* v. *People of State of Illinois, supra.* But it is not simply a question of state procedure when a state court of last resort closes the door to *any* consideration of a claim of denial of a federal right."

In the case at bar, the Supreme Court of Illinois "closes the door to *any* consideration of a claim of denial of a federal right",

(a) by holding that the *Illinois Department of Revenue may never be made a defendant* regardless of how grievous, arbitrary or dictatorial its action may be; and

(b) by requiring that the aggrieved citizen produce an administrative agency's record which he does not have and which he cannot compel the Illinois Department of Revenue to produce upon its refusal to do so, as in the present case, *because the Department of Revenue can never be made a defendant for any purpose.*

Both of these propositions result in one and the same thing, viz., the citizen (appellant herein) is left with absolutely no remedy whatsoever and is deprived of "due process of law" under the 14th Amendment to the Constitution of the United States by the denial of a hearing and an opportunity to be heard and is left entirely remediless.

The appellee, in its Statement Against Jurisdiction, makes the following amazing, *but totally untrue*, statement:

> "If the agency refuses to file the return, the citizen's remedy is neither to default the agency nor to substitute evidence *dehors* the administrative record for the record itself, but is to compel, by proceedings

BLEED THROUGH COPY BOU

for contempt of court, if necessary, the production of the administrative record whose physical presence before the reviewing court is prerequisite to that court's jurisdiction."

This is the very remedy which is totally lacking when the Illinois Department of Revenue is the administrative agency against whose grievance relief is sought, because *the Department of Revenue can never be made a defendant for any purpose whatsoever and cannot be compelled, under the holding of the Supreme Court of Illinois in the present case, by contempt of court proceedings or in any other way, to issue a license or to produce a record or to do anything else.* The result of this decision is that the Supreme Court of Illinois has not only closed the door to any consideration of a claim of denial of a federal right, but has "double-locked" it and barred it so that no one can even attempt to open the closed door.

The Illinois Department of Revenue administers and collects many types of taxes, and issues and revokes licenses in connection therewith, as shown in the Jurisdictional Statement which was filed by the Appellant. There are in Illinois 13 "Departments" of State Government—Department of Finance, Department of Agriculture, Department of Labor, Department of Mines and Minerals, Department of Public Works and Buildings, Department of Public Welfare, Department of Public Health, Department of Registration and Education, Department of Conservation, Department of Insurance, Department of Public Safety, Department of Aeronautics and Department of Revenue. The decision in the present case will apply to all of said Departments and will practically make a dictatorship out of each of said Departments.

The result of this decision is that the administrative agency may arbitrarily demand that a person pay any

ND CLOSE IN CENTER

amount designated by the administrative agency (as in the case at bar), and the citizen is helpless and remediless, for the administrative agency cannot be made a defendant. This places the Illinois Department of Revenue beyond the pale of the law and, in fact, beyond the possibility of judicial correction, and deprives the citizen of his elementary rights in direct violation of "due process of law" as guaranteed by the 14th Amendment to the Constitution of the United States. Under the decision of the Supreme Court of Illinois in the case at bar, the Department of Revenue (or any of the 13 "Departments" in the State of Illinois) can exercise arbitrary and dictatorial powers without judicial control whatsoever. This decision of the Supreme Court of Illinois is in violation of Article VI of the Constitution of the United States which provides: "This Constitution and the Laws of the United States ... shall be the supreme Law of the Land; and the Judges of every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding," all of which is fully covered in the Jurisdictional Statement and Petition for Appeal of the Appellant, and the Order Allowing Appeal which was signed by the Chief Justice of the Supreme Court of Illinois.

Respectfully submitted,

HARRY G. FINS and WALTER F. DODD,
Counsel for Appellant.

77 W. Washington Street
Suite 1217
Chicago 2, Illinois.

BLEED THROUGH